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Judge Thomas S. Zilly

AUG 23 2016

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

ALEXANDER MIHAILOVSKI,

Defendant.

NO. CR12-0251TSZ

PLEA AGREEMENT

The United States of America, by and through Annette L. Hayes, United States Attorney for the Western District of Washington, and Norman M. Barbosa and Francis Franze-Nakamura, Assistant United States Attorneys for said district, and Defendant, ALEXANDER MIHAILOVSKI, and his attorneys, Jennifer E. Wellman and Mohammad Ali Hamoudi, enter into the following Agreement, pursuant to Federal Rule of Criminal Procedure 11(c)(1)(A)&(B):

1. **The Charges.** Defendant, having been advised of the right to have this matter tried before a jury, agrees to waive that right and enters a plea of guilty to the following charge contained in the Indictment.

a. Conspiracy to Commit Wire Fraud, as charged in Count 1, in violation of Title 18, United States Code, Section 1349;

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2 By entering these plea of guilty, Defendant hereby waives all objections to the
3 form of the charging document. Defendant further understands that before entering his
4 guilty plea, he will be placed under oath. Any statement given by Defendant under oath
5 may be used by the United States in a prosecution for perjury or false statement.

6 2. **Elements of the Offense.** The elements of the offense to which Defendant
7 is pleading guilty are as follows:

8 a. The elements of the offense of Conspiracy to Commit Wire Fraud, as
9 charged in Count 1, in violation of Title 18, United States Code, Section 1349, are as
10 follows:

11 First, there was an agreement between two or more persons to commit at
12 least one crime as charged in the Indictment, to wit: Wire Fraud, in violation of Title 18,
13 United States Code, Section 1343; and

14 Second, the defendant became a member of the conspiracy knowing of at
15 least one of its objects and intending to help accomplish it.

16 The elements of the offense of wire fraud are:

17 First, a member of the conspiracy knowingly devised or intended to devise
18 a scheme or plan to defraud, or a scheme or plan for obtaining money or property by
19 means of false or fraudulent pretenses, representations, or promises;

20 Second, the statements made or facts omitted as part of the scheme were
21 material; that is, they had a natural tendency to influence, or were capable of influencing,
22 a person to part with money or property;

23 Third, a member of the conspiracy acted with the intent to defraud; that is,
24 the intent to deceive or cheat; and

25 Fourth, a member of the conspiracy transmitted, or caused to be transmitted
26 by wire communication in interstate commerce, writings, signs, or signals to carry out or
27 attempt to carry out an essential part of the scheme.
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2 3. **The Penalties.** Defendant understands that the statutory penalties
3 applicable to the offense to which he is pleading guilty are as follows:

4 a. Count 1 (Conspiracy to Commit Wire Fraud): A maximum term of
5 imprisonment of up to twenty (20) years, a fine of up to Two Hundred Fifty Thousand
6 Dollars (\$250,000.00), a period of supervision following release from prison of up to five
7 (5) years, and a mandatory special assessment of One Hundred Dollars (\$100.00).

8 Defendant agrees that the special assessment shall be paid at or before the time of
9 sentencing.

10 Defendant understands that supervised release is a period of time following
11 imprisonment during which he will be subject to certain restrictive conditions and
12 requirements. Defendant further understands that if supervised release is imposed and he
13 violates one or more of the conditions or requirements, Defendant could be returned to
14 prison for all or part of the term of supervised release that was originally imposed. This
15 could result in Defendant's serving a total term of imprisonment greater than the statutory
16 maximum stated above.

17 Defendant understands that as a part of any sentence, in addition to any term of
18 imprisonment and/or fine that is imposed, the Court may order Defendant to pay
19 restitution to any victim of the offense, as required by law.

20 Defendant agrees that any monetary penalty the Court imposes, including the
21 special assessment, fine, costs, or restitution, is due and payable immediately and further
22 agrees to submit a completed Financial Statement of Debtor form as requested by the
23 United States Attorney's Office.

24 4. **Rights Waived by Pleading Guilty.** Defendant understands that by
25 pleading guilty, he knowingly and voluntarily waives the following rights:

26 a. The right to plead not guilty and to persist in a plea of not guilty;

27 b. The right to a speedy and public trial before a jury of his peers;
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- 2 c. The right to the effective assistance of counsel at trial, including, if
 3 Defendant could not afford an attorney, the right to have the Court
 4 appoint one for him;
- 5 d. The right to be presumed innocent until guilt has been established
 6 beyond a reasonable doubt at trial;
- 7 e. The right to confront and cross-examine witnesses against Defendant
 8 at trial;
- 9 f. The right to compel or subpoena witnesses to appear on his behalf at
 10 trial;
- 11 g. The right to testify or to remain silent at trial, at which trial such
 12 silence could not be used against Defendant; and
- 13 h. The right to appeal a finding of guilt or any pretrial rulings.

14 5. **Immigration Consequences.** Defendant recognizes that pleading guilty
 15 may have consequences with respect to his immigration status because he is not a citizen
 16 of the United States. Under federal law, a broad range of crimes are grounds for removal,
 17 including the offenses to which Defendant is pleading guilty, and some offense make
 18 removal from the United States is presumptively mandatory. Removal and other
 19 immigration consequences are the subject of a separate proceeding, however, and
 20 Defendant understands that no one, including his attorney or the district court, can predict
 21 to a certainty the effect of his conviction on his immigration status. Defendant
 22 nevertheless affirms that he wants to plead guilty regardless of any immigration
 23 consequences that his guilty pleas may entail, even if the consequence is his mandatory
 24 removal from the United States.

25 6. **Ultimate Sentence.** Defendant acknowledges that no one has promised or
 26 guaranteed what sentence the Court will impose.

27 7. **Forfeiture.** Pursuant to Title 18, United States Code, Section 981(a)(1)(C)
 28 and Title 28, United States Code, Section 2461(c), Defendant agrees to forfeit to the
 United States immediately all of Defendant's right, title, and interest in any property, real

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2 or personal, which constitutes or is derived from proceeds traceable to Count 1, whether in
3 possession or control of the defendant or the defendant's nominees, and whether located
4 within or outside the United States. The parties agree that the property to be forfeited
5 includes, but is not limited to, a money judgment in an amount representing the proceeds
6 generated by the charged conspiracy. The parties reserve the right to present evidence
7 and argumentation to the Court at the time of sentencing regarding the appropriate
8 amount of that money judgment. The United States further reserves the right to seek
9 forfeiture of additional assets in a separate civil action.

10 Defendant agrees to provide a truthful proffer statement regarding all of
11 Defendant's assets and to make a full and complete disclosure of all assets in which
12 Defendant has any interest or over which Defendant exercises any control and any assets
13 which are held or controlled by a nominee.

14 Defendant agrees to hold the United States, its agents and employees harmless
15 from any claims whatsoever in connection with the seizure or forfeiture of property
16 covered by this agreement. Defendant agrees to waive all interest in any such assets in
17 any administrative or judicial forfeiture proceeding, whether criminal or civil. The
18 defendant knowingly and voluntarily agrees to waive any claim or defense under the
19 Eighth Amendment to the U.S. Constitution as to this criminal forfeiture or any
20 subsequent civil forfeiture of the directly forfeitable property, including any claim that
21 said action constitutes an excessive fine or penalty. The defendant also knowingly and
22 voluntarily agrees to waive any defense or argument that he might have under the rule of
23 specialty doctrine.

24 Defendant agrees that the forfeiture provisions of this plea agreement are intended
25 to, and will, survive him, notwithstanding the abatement of any underlying criminal
26 conviction after the execution of this agreement. The forfeitability of any particular
27 property pursuant to this agreement shall be determined as if Defendant had survived, and
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2 that determination shall be binding upon Defendant's heirs, successors and assigns until
3 the agreed forfeiture, including any agreed money judgment amount, is collected in full.

4 8. **Abandonment.** Defendant agrees to abandon any interest in the data or
5 devices that were seized by domestic and international law enforcement in connection
6 with this case.

7 9. **Statement of Facts.** The parties agree on the following facts. Defendant
8 admits he is guilty of the charged offense:

9 a. Beginning at a date uncertain, but no later than in or around 2006,
10 and continuing until on or about June 21, 2011, within the Western District of
11 Washington and elsewhere, a group of foreign nationals did knowingly and willfully
12 agree to carry out a scheme and artifice to defraud victims in the United States and across
13 the world into purchasing fraudulent computer software in a manner that knowingly
14 utilized international and interstate wire communications.

15 b. The scheme tricked thousands of victims into believing that their
16 computers were infected with malicious software and induced the victims to purchase
17 purported computer security software to eliminate the infection. The purported computer
18 security software was itself malware that was uploaded onto the victims' computers, did
19 not perform a legitimate function, and caused the victims' computers to become further
20 compromised. By no later than December 11, 2008, ALEXANDER MIHAILOVSKI
21 was aware that the purpose of the scheme was to sell fraudulent computer security
22 software that did not serve a legitimate function and that victims were forced to buy the
23 product through misleading and aggressive marketing. ALEXANDER MIHAILOVSKI
24 also was aware or at least willfully blind to the fact that the fraudulent product operated
25 as malware and further compromised the victims' computers.

26 c. By no later than December 11, 2008, ALEXANDER
27 MIHAILOVSKI joined the scheme by agreeing to establish and operate the credit card
28 payment processing services for the scheme. When the victims were tricked into
purchasing the fraudulent security software, they would be required to make a credit card

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2 payment via the Internet. Defendant knew that the ability to pay by credit card gave the
 3 scheme an appearance of legitimacy. Defendant set up credit card processing accounts
 4 and bank accounts associated with shell companies operated by the scheme for the
 5 purpose of processing credit card payments from victims. Defendant's credit card
 6 processing mechanisms collected personally identifiable information from the victims
 7 including names, addresses, credit card numbers and other data for purposes of processing
 8 credit card payments in furtherance of the scheme.

9 d. As part of the scheme, ALEXANDER MIHAILOVSKI used the
 10 alias "Dimitry Ivankov," and held himself out as the account director of a company called
 11 PSBill (also known as Mystique Enterprises, LTD). Defendant used the email accounts
 12 "account@psbill.com" and "account@failsafepayments.com," in addition to the Jabber
 13 account "PSBill (439254299)." ALEXANDER MIHAILOVSKI was a co-owner of both
 14 PSBill and Failsafe Payments, and used these companies to facilitate the scheme.

15 e. The payment processing mechanisms that defendant ALEXANDER
 16 MIHAILOVSKI established for the purpose of facilitating the scheme processed
 17 approximately \$17,747,418.49 ~~million~~ worth of United States currency in credit card FFN / MO
 18 payments. At least 7,300 people in Washington State were victims of Defendant's fraud
 19 scheme. Among these victims were thousands of victims in the Western District of
 20 Washington who made payments processed by the defendant's payment processing
 21 mechanisms and who had malicious code uploaded onto their computers.

22 The parties further agree that the Court may consider for the purpose of sentencing
 23 additional facts contained in the Presentence Report subject to objections by the parties,
 24 as well as any facts presented by either party at sentencing.

25 10. **United States Sentencing Guidelines.** Defendant understands and
 26 acknowledges that the Court must consider the sentencing range calculated under the
 27 United States Sentencing Guidelines and possible departures under the Sentencing
 28 Guidelines together with the other factors set forth in Title 18, United States Code,
 Section 3553(a), including: (1) the nature and circumstances of the offenses; (2) the

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2 history and characteristics of the defendant; (3) the need for the sentence to reflect the
3 seriousness of the offenses, to promote respect for the law, and to provide just
4 punishment for the offenses; (4) the need for the sentence to afford adequate deterrence to
5 criminal conduct; (5) the need for the sentence to protect the public from further crimes
6 of the defendant; (6) the need to provide the defendant with educational and vocational
7 training, medical care, or other correctional treatment in the most effective manner;
8 (7) the kinds of sentences available; (8) the need to provide restitution to victims; and
9 (9) the need to avoid unwarranted sentence disparity among defendants involved in
10 similar conduct who have similar records. Accordingly, Defendant understands and
11 acknowledges that:

12 a. The Court will determine Defendant's applicable Sentencing
13 Guidelines range at the time of sentencing;

14 b. After consideration of the Sentencing Guidelines and the factors in
15 18 U.S.C. 3553(a), the Court may impose any sentence authorized by law, up to the
16 maximum term authorized by law;

17 c. The Court is not bound by any recommendation regarding the
18 sentence to be imposed, or by any calculation or estimation of the Sentencing Guidelines
19 range offered by the parties or the United States Probation Department, or by any
20 stipulations or agreements between the parties in this Plea Agreement; and

21 d. Defendant may not withdraw his guilty pleas solely because of the
22 sentence imposed by the Court.

23 11. **Sentencing Factors.** The parties agree that the following Sentencing
24 Guidelines provisions apply to this case:

25 a. The appropriate version of the United States Sentencing Guidelines
26 Manual is the 2015 version.

27 b. The appropriate section of the United States Sentencing Guidelines
28 is Section 2B1.1, which specifies a base offense level of 7;

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2 c. The base offense level should be increased by 20 levels because the
3 loss amount was more than \$9,500,000.00, but less than \$25,000,000.00 pursuant to
4 Section 2B1.1(b)(1)(K);

5 d. The base offense level should be increased by 2 levels because the
6 offense involved more than ten (10) victims and was committed through mass marketing
7 pursuant to Section 2B1.1(b)(2)(A);

8 e. The base offense level should be increased by 2 levels because a
9 substantial part of the fraudulent scheme was committed from outside the United States
10 and the offense otherwise involved sophisticated means and the defendant intentionally
11 engaged in or caused the conduct constituting sophisticated means, pursuant to Section
12 2B1.1(b)(10)(B) and (C);

13 The parties agree they are free to present arguments regarding the applicability of
14 all other provisions of the United States Sentencing Guidelines. Defendant understands,
15 however, that at the time of sentencing, the Court is free to reject these stipulated
16 adjustments, and is further free to apply additional downward or upward adjustments in
17 determining Defendant's Sentencing Guidelines range.

18 **12. Acceptance of Responsibility.** The United States acknowledges that if
19 Defendant qualifies for an acceptance of responsibility adjustment pursuant to USSG §
20 3E1.1(a), and if the offense level is sixteen (16) or greater, his total offense level should
21 be decreased by three (3) levels pursuant to USSG §§ 3E1.1(a) and (b), because he has
22 assisted the United States by timely notifying the authorities of Defendant's intention to
23 plead guilty, thereby permitting the United States to avoid preparing for trial and
24 permitting the Court to allocate its resources efficiently. Defendant acknowledges that
25 failure to comply with any of the terms of this plea agreement, including, but not limited
26 to, the forfeiture provisions in paragraph eight (8) of this plea agreement will disqualify
27 him from receiving credit for acceptance of responsibility.

28 **13. Sentencing Recommendation.** The United States agrees to recommend no
more than seventy-six (76) months of imprisonment. The parties are free to recommend

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2 any conditions of supervised release the parties deem appropriate and defendant
3 acknowledges that the United States may also recommend a fine.

4 Defendant understands that this recommendation is not binding on the Court and
5 the Court may reject the recommendations of the parties and may impose any term of
6 imprisonment up to the statutory maximum penalty authorized by law. Defendant further
7 understands that he cannot withdraw his guilty pleas simply because of the sentence
8 imposed by the district court.

9 14. **Non-Prosecution of Additional Offenses.** As part of this Plea Agreement,
10 the United States Attorney's Office for the Western District of Washington agrees to
11 dismiss the remaining count of the Indictment at the time of sentencing and not to
12 prosecute Defendant for any additional offenses known to it as of the time of this
13 Agreement that are based upon evidence in its possession at this time, and that arise out
14 of the conduct giving rise to this investigation. In this regard, Defendant recognizes the
15 United States has agreed not to prosecute all of the criminal charges the evidence
16 establishes were committed by Defendant solely because of the promises made by
17 Defendant in this Agreement. Defendant agrees, however, that for purposes of preparing
18 the Presentence Report, the United States Attorney's Office will provide the United
19 States Probation Office with evidence of all conduct committed by Defendant.

20 Defendant agrees that any charges to be dismissed before or at the time of
21 sentencing were substantially justified in light of the evidence available to the United
22 States, were not vexatious, frivolous or taken in bad faith, and do not provide Defendant
23 with a basis for any future claims under the "Hyde Amendment," Pub. L. No. 105-119
24 (1997).

25 15. **Breach, Waiver, and Post-Plea Conduct.** Defendant agrees that if
26 Defendant breaches this Plea Agreement, the United States may withdraw from this Plea
27 Agreement and Defendant may be prosecuted for all offenses for which the United States
28 has evidence. Defendant agrees not to oppose any steps taken by the United States to
nullify this Plea Agreement, including the filing of a motion to withdraw from the Plea

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2 Agreement. Defendant also agrees that if Defendant is in breach of this Plea Agreement,
3 Defendant has waived any objection to the re-institution of any charges in the Indictment
4 that were previously dismissed or any additional charges that had not been prosecuted.

5 Defendant further understands that if, after the date of this Agreement, Defendant
6 should engage in illegal conduct, or conduct that violates any conditions of release or the
7 conditions of his confinement, (examples of which include, but are not limited to,
8 obstruction of justice, failure to appear for a court proceeding, criminal conduct while
9 pending sentencing, and false statements to law enforcement agents, the Pretrial Services
10 Officer, Probation Officer, or Court), the United States is free under this Agreement to
11 file additional charges against Defendant or to seek a sentence that takes such conduct
12 into consideration by requesting the Court to apply additional adjustments or
13 enhancements in its Sentencing Guidelines calculations in order to increase the applicable
14 advisory Guidelines range, and/or by seeking an upward departure or variance from the
15 calculated advisory Guidelines range. Under these circumstances, the United States is
16 free to seek such adjustments, enhancements, departures, and/or variances even if
17 otherwise precluded by the terms of the plea agreement.

18 **16. Waiver of Appellate Rights and Rights to Collateral Attacks.** Defendant
19 acknowledges that by entering the guilty pleas required by this plea agreement,
20 Defendant waives all rights to appeal from his conviction and any pretrial rulings of the
21 court. Defendant further agrees that, provided the court imposes a custodial sentence that
22 is at or below seventy-six (76) months, Defendant waives to the full extent of the law:

23 a. Any right conferred by Title 18, United States Code, Section 3742,
24 to challenge, on direct appeal, the sentence imposed by the court, including any fine,
25 restitution order, probation or supervised release conditions, or forfeiture order (if
26 applicable); and

27 b. Any right to bring a collateral attack against the conviction and
28 sentence, including any restitution order imposed, except as it may relate to the
effectiveness of legal representation; and

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2 This waiver does not preclude Defendant from bringing an appropriate motion
3 pursuant to 28 U.S.C. § 2241, to address the conditions of his confinement or the
4 decisions of the Bureau of Prisons regarding the execution of his sentence.

5 If Defendant breaches this Plea Agreement at any time by appealing or collaterally
6 attacking (except as to effectiveness of legal representation) the conviction or sentence in
7 any way, the United States may prosecute Defendant for any counts, including those with
8 mandatory minimum sentences, that were dismissed or not charged pursuant to this Plea
9 Agreement.

10 17. **Voluntariness of Plea.** Defendant agrees that he has entered into this Plea
11 Agreement freely and voluntarily and that no threats or promises, other than the promises
12 contained in this Plea Agreement, were made to induce Defendant to enter his pleas of
13 guilty.

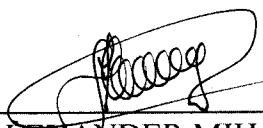
14 18. **Statute of Limitations.** In the event this Agreement is not accepted by the
15 Court for any reason, if Defendant has breached any of the terms of this Plea Agreement,
16 or if any party withdraws from the Plea Agreement, the statute of limitations shall be
17 deemed to have been tolled from the date of the Plea Agreement to the later of: (1) thirty
18 (30) days following the date of non-acceptance of the Plea Agreement by the Court; or
19 (2) thirty (30) days following the date on which a breach of the Plea Agreement by
20 Defendant is discovered by the United States Attorney's Office; or (3) the date any party
21 is permitted to withdraw from the Plea Agreement.


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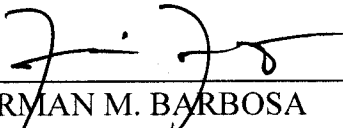
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2 19. **Completeness of Agreement.** The United States and Defendant
3 acknowledge that these terms constitute the entire Plea Agreement between the parties.
4 This Plea Agreement binds only the United States Attorney's Office for the Western
5 District of Washington. It does not bind any other United States Attorney's Office or any
6 other office or agency of the United States, or any state or local prosecutor.

7 Dated this 23rd day of August, 2016.

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10 
11 ALEXANDER MIHAIOVSKI
12 Defendant

13
14  for JW
15 JENNIFER E. WELLMAN
16 Attorney for Defendant

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18 
19 MOHAMMAD ALI HAMOUDI
20 Attorney for Defendant

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23 NORMAN M. BARBOSA
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25 Assistant United States Attorneys
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